



242993

Larry Kyte

04/30/03 11:26 AM

To: Thomas Turner/R5/USEPA/US@EPA
 Subject: Re: Old American Zinc Plant (OAZ) SF Site (Remedial) - Attempt at
 AOC with PRP Blue Tee, Inc - Issue of possible use of UAO

Tom, I would like us not to threaten to issue a UAO at this time. I would be more general in a description of the consequences. It has been general policy/practice not to issue UAO's for RIFS work. The Region has not issued such orders except for 2 occasions in March 1989. (This was at a time when there was no near bottom line National Model and about the time that Region 5's near bottom line model was adopted. Negotiations had been notoriously slow to conclude, and the program was quite frustrated with a lack of perceived progress back then.) If we are going to deviate from that approach I think that we need to discuss this with Bill and Dave. I am very concerned about the legal risks as to our authority to issue UAOs for RIFS work under Section 104(a). There is an internal discussion going on now about this issue with HQ.

Attached is a draft memo by Anne Berube, OSRE, that musters arguments as to a legal basis for issuance of UAOs. You will see my comments in Red. The next draft is going to be distributed and discussed by the SF Branch Chief group. (To date only Paul Simon (R2) and myself have provided Anne comments). The topic previously has raised concerns by Branch Chiefs from other Regions as well. Region 2 has been the primary issuer of such orders. The memo is meant to be confidential, and should not receive be distributed. We want it to be kept internal. Because perhaps as many as 50 orders have been issued since the passage of SARA, I doubt we would ever adopt a formal position that the statute does not allow the orders, but if this memo is ever finalized, it may only be a staff legal research project that can be useful in case we ever had to defend such orders.

I have my doubts as to whether the general policy against UAO's for RIFS will be changed. Before we proceed in issuing a UAO in this Region, I would want to have the feed back from the SF



Branch Chief discussion and to brief Dave and Bill as to the risks. Larry UAO legal authority.wp

NOTICE: This communication may contain privileged or other confidential information. If you are not the intended recipient, or believe you have received this communication in error, please delete the copy you received, and do not print, copy, re-transmit, disseminate or otherwise use the information. Thank you.

Larry Kyte
 Phone: (312) 886-4245

Thomas Turner

Thomas Turner

04/30/03 08:20 AM

To: Connie Puchalski, Larry Kyte cc: RONALD MURAWSKI
 Subject: Old American Zinc Plant (OAZ) SF Site (Remedial) - Attempt at
 AOC with PRP Blue Tee, Inc - Issue of possible use of UAO

Hi Connie and Larry: Next Friday, May 9, is the date that we gave Blue Tee and the federal PRP (GSA) to achieve a settlement between one another and then sign our final draft AOC for performance of RI/FS at the Site. Ron Murawski and I plan to call Blue Tee, Inc. on Monday (May 5) and find out how far along they are (I am aware of one exchange of offer and counter-offer of a cash settlement), and encourage them to conclude their matter and sign the AOC on time.

I wanted to confirm whether I can still tell Blue Tee (and GSA) that should they fail to sign, we will

begin the UAO process against all PRPs. The last time that we discussed this, it appeared that would still be our next step. I do not want to say it on the call unless we can go forward with it. I believe that a UAO would be appropriate, because we could go after the cooperating and non-cooperating (Site owner) PRPs and, while we would have to bring in DOJ-Enf to negotiate with DOJ-Def, we would likely get a separate cash out with GSA, and then be able to deal with the private PRPs on a better basis.

Is it appropriate to take this approach at this time?

Thanks. Tom Turner LAN or 6-6613